

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**BRIAN COLLAR,
RESPONDENT**

vs.

**MISSOURI DEPARTMENT OF CORRECTIONS,
APPELLANT**

DOCKET NUMBER WD71362

DATE: JUNE 22 , 2010

Appeal from:

Cole County Circuit Court
The Honorable Richard G. Callahan, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Attorneys:

Brian Collar, Respondent Pro-se

Caroline M. Coulter, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BRIAN COLLAR, RESPONDENT

v.

MISSOURI DEPARTMENT OF CORRECTIONS, APPELLANT

WD71362

Cole County, Missouri

Before Division Three Judges: James M. Smart, Jr., P.J., Joseph M. Ellis and Gary D. Witt, JJ.

On April 4, 1983, Brian Collar was sentenced by the Circuit Court of St. Louis County to six concurrent terms of seventeen years imprisonment for offenses committed in St. Louis County. On September 17, 1987, he was released on parole.

On January 5, 1989, Collar was arrested and charged with six counts of robbery and six counts of armed criminal action related to crimes committed in St. Louis City. Collar remained in jail awaiting trial until his parole on the St. Louis County sentences was revoked on April 24, 1989, and he was returned to the custody of the Missouri Department of Corrections.

On October 4, 1989, Collar pled guilty to the six counts of robbery and six counts of armed criminal action in the Circuit Court of the City of St. Louis. The court sentenced him to twelve concurrent terms of 30 years imprisonment on those counts. The judgment reflected that those sentences were to run concurrent to a federal sentence but made no mention of the sentences imposed by the county. Subsequently, on April 27, 1990, as a result of a stipulation by defense counsel, the State, and the plea judge, the circuit court entered a "Corrected Sentence and Judgment" reflecting that Collar's city sentences were also to be served concurrently with his county sentences.

After discovering that the Department of Corrections was denying him credit against his thirty-year sentences for the time he spent imprisoned between April 24, 1989, and October 27, 1990, Collar filed a petition in the Circuit Court of Cole County seeking a declaratory judgment stating that he was entitled to such credit. After the Department of Corrections filed its answer, Collar filed a motion for judgment on the pleadings which was ultimately granted by the trial court. The Department of Corrections brings two points on appeal.

AFFIRMED IN PART, REVERSED IN PART.

Division Three holds:

(1) The trial court erred in declaring that Collar was entitled to credit against his city sentences for the 163 days he spent in prison between the date his parole was revoked on the county sentences and the date he entered his plea and was convicted on the city counts. A defendant is not entitled to credit on a concurrent sentence that would give him credit for time spent in custody on an unrelated sentence prior to the imposition of the sentence for which credit was sought.

(2) The trial court did not err in concluding that Collar was entitled for credit against the sentence entered on the city counts for the 204 days he spent in prison from the date of the initial sentencing on those counts until the date the corrected judgment was entered. Section 558.031.3, RSMo 1986, required that the new sentence be calculated as if it had commenced at the time the vacated sentence was imposed.

Opinion by: Joseph M. Ellis, Judge

Date: June 22, 2010

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